

# U.S. Department of Energy

## Office of Legacy Management



### Procedure: 200.1-6

Effective: 3/13/06

**SUBJECT: COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE RECORD (AR) PROCESSING**

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1. PURPOSE. To provide U.S. Department of Energy (DOE) Office of Legacy Management (LM) personnel with instructions for maintaining and processing CERCLA AR files.

This procedure applies to all LM employees and support contractors who identify, capture, review, and protect the documents used as a basis for CERCLA-related response actions.

2. CANCELLATION. None

3. REFERENCES.

- a. *5 United States Code* (U.S.C.) 552, Freedom of Information Act
- b. 42 U.S.C. 103, Comprehensive Environmental Response, Compensation, and Liability
- c. *40 Code of Federal Regulations* 300.800-300.825 (Subpart I, Administrative Record for Selection of Response Action)
- d. Executive Order 12580, Superfund Implementation, January 23, 1987
- e. DOE Order 243.1, Records Management Program
- f. LM Procedure 200-2, Electronic Records

- g. U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER) Directive No. 9833.3A-1, December 1990, Final Guidance on Administrative Records for Selecting CERCLA Response Actions

4. DEFINITIONS.

- a. Administrative Record (AR) File -- A collection of documents that establishes the basis for the selection and performance of environmental removal and remedial actions at a closure site. An AR File may contain correspondence, the Remedial Investigation/Feasibility Study, the Record of Decision (ROD), and public comments. An AR File may consist of a Public Portion, which includes documents available to the public and any stakeholders, and a Confidential Portion, which includes documents that may be restricted from release due to the sensitive information they contain.

NOTE: If after a ROD is approved new information is received that could affect the implementation of the remedy or indicate that reassessment of the remedy is necessary, the lead agency must respond to this information and place all comments in the AR. This is necessary if comments contain significant information; the new information is not contained elsewhere in the AR; it was not possible to submit the information during the public comment period; and the new information supports the need to significantly alter the remedial action.

The type of documentation required for a post-ROD change depends on the extent of the change. A minor change requires a memo or note. A significant change requires an explanation of major differences. A fundamental change requires a ROD amendment.

- b. AR Technician -- LM support contractor responsible for maintenance of AR Files and processing of documents according to the requirements of CERCLA, OSWER guidance, and this procedure.
- c. CERCLA AR Database -- The database used to maintain information and images relating to the CERCLA AR collections. The publicly available portion of the database allows the public and stakeholders to search and view images of documents contained in CERCLA AR collections.
- d. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) -- A Federal law passed in 1980 and modified in 1986 by the Superfund Amendments and Reauthorization Act (SARA). The Acts created a special tax that goes into a trust fund, commonly known as Superfund, to investigate and clean up abandoned or uncontrolled hazardous waste sites. Under the program, EPA can either: (1) Pay for site cleanup when parties responsible for the contamination cannot be located or are unwilling or unable to perform the work; or (2) Take legal action to force parties responsible for site contamination

to clean up the site or pay back the Federal government for the cost of the cleanup.

- e. Freedom of Information Act (FOIA) -- Law enacted in 1966 and codified at 5 U.S.C. 552. The basic purpose of the law is to ensure an informed citizenry in order to hold the Government accountable.
- f. Information Repository -- A compilation of all information on response activities that is available to the public. While an AR contains only those documents that form the basis for selecting a response action, an information repository contains a copy of all items made available to the public.
- g. Office of Solid Waste and Emergency Response (OSWER) -- EPA office that provides policy, guidance, and direction for EPA's hazardous waste and emergency response programs. The functions of these programs include the development and enforcement of policies, standards, and regulations for solid and hazardous waste treatment, storage, and disposal; national management of Superfund; and the development of guidelines for the Emergency Preparedness, "Community Right-to-Know," and Underground Storage Tank programs.
- h. Official Use Only (OUO) -- (1) A designation identifying certain unclassified but sensitive information that may be exempt from public release under the Freedom of Information Act; or, (2) a security classification marking used during the period July 18, 1949, through October 22, 1951.
- i. Privileged Information -- Informational documents (e.g., "attorney work product") prepared as part of the legal preparation for a client, other applicable privileges, and exemptions as listed in the Freedom of Information Act. Privileged information may be excluded from public disclosure.
- j. Proprietary Information -- Information that embodies trade secrets developed at private expense outside of a Cooperative Research and Development Agreement and commercial or financial information which is privileged or confidential under the Freedom of Information Act, 5 U.S.C. (B) (4).
- k. Redact -- To edit documents containing sensitive information before their release to the public and stakeholders.
- l. Superfund Amendments and Reauthorization Act (SARA) -- An amendment to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of October 17, 1986. SARA reflected EPA's experience in administering the complex Superfund program during its first six years and made several important changes and additions to the program. SARA stressed the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites; required Superfund actions to consider the standards and requirements found in other State and Federal environmental laws

and regulations; provided new enforcement authorities and settlement tools; increased State involvement in every phase of the Superfund program; increased the focus on human health problems posed by hazardous waste sites; encouraged greater citizen participation in making decisions on how sites should be cleaned up; and increased the size of the trust fund to \$8.5 billion.

- m. Unclassified Controlled Information (UCI) -- Unclassified information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552).
  - n. Unclassified Controlled Nuclear Information (UCNI) -- Certain unclassified government information prohibited from unauthorized dissemination under section 148 of the Atomic Energy Act (1) which concerns atomic energy defense programs; and (2) which pertains to the design of production facilities or utilization facilities; security measures (including security plans, procedures, and equipment) for the physical protection of production or utilization facilities; nuclear material contained in such facilities; or nuclear material in transit; the design, manufacture, or utilization of any nuclear weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Assistant Secretary for Defense Programs (or the head of the predecessor agency of the Department of Energy) pursuant to section 142 of the Atomic Energy Act; or whose unauthorized dissemination could reasonably be expected to significantly increase the likelihood of illegal production of nuclear weapons; or theft, diversion, or sabotage of nuclear materials, equipment, or facilities.
5. QUALITY CONTROL. The LM-10 Records Liaison Officer (RLO) responsible for work associated with this procedure shall review it annually or as necessary to accommodate changing conditions within LM and ensure compliance with applicable laws, regulations, and DOE requirements.
6. RESPONSIBILITIES.

The following tasks are performed mainly when the AR is open and if changes to the ROD are made.

- a. The LM-10 Records Points of Contact (POCs):
  - Provide oversight to ensure AR Files are maintained and processed according to the requirements of CERCLA, the OSWER Guidance, or this procedure or as expressly written in DOE site-specific binding agreements.
  - Respond to information requests in a timely manner.

b. LM personnel serving as Technical Project Representatives:

- Provide LM-10 with a list of organizations and individuals responsible for originating or identifying AR documents.
- Review AR Files and indexes quarterly and as appropriate to ensure relevance, accuracy, and completeness as appropriate.
- Identifies documents for AR File inclusion, and forwards those documents to the AR Technician. The Technical Project Representatives takes appropriate action to protect documents submitted for AR inclusion if those documents contain UCI.
- Provide guidance to LM employees and support contractors concerning the processing of AR documents.

c. The AR Technician:

- Maintains the site AR Files inherited by LM, including processing all new AR documents to the files. Occasionally, new documents (e.g., changes to the ROD) will be added to the AR.
- Maintains the CERCLA AR Database, adding information as appropriate.
- Maintains and protects AR documents containing UCNI and OUO appropriately, following DOE directive guidance.
- Ensures AR File documents are available on the LM web-based search application and in public repositories to allow ease of access by the public and stakeholders.

7. TRAINING REQUIREMENTS.

- a. The LM-10 RLO ensures necessary training regarding the management of AR Files is available and provided to LM employees and support contractors.
- b. LM employees and support contractors with responsibilities included in this procedure shall be cognizant of those responsibilities and receive relevant training as appropriate.
- c. LM employees and support contractors processing CERCLA AR documents will be provided UCNI and OUO awareness training as appropriate.

8. DOCUMENT CONTROL.

- a. The current and official controlled hard copy version of this document shall reside with the DOE LM Directives Manager.
- b. The DOE LM Directives Manager shall place the most current version of this document on the LM Intranet.
- c. The AR Technician:
  - (1) Maintains the CERCLA AR Database, AR Files, and current indexes of the AR File contents.
  - (2) Tracks public and stakeholder requests for AR File information.
  - (3) Ensures portions of an AR File that contain UCI are not released to the public and stakeholders without the proper approval.

9. PROCEDURE. The procedural steps defined in this section provide LM employees and support contractors with maintaining and processing instructions for AR Files and indexes.

a. AR File – Public Portion

This section provides instructions for adding information to the Public Portion of an AR File. For instructions on considering UCI for inclusion in an AR File, see Section 9.b., AR File – Confidential Portion.

Attachment A. illustrates the AR File Document Inclusion process, while Attachment B. includes expounding information relating to CERCLA history and responsibilities. Attachment C. lists examples of documents to be included/excluded from the AR.

- (1) The Technical Project Representative:
  - (a) Identifies or determines that a document should be included in an AR File.
  - (b) Reviews the document to ensure it is complete, unmarked, legible, and signed (if appropriate). This includes ensuring:
    - The document is the original or the best available copy.
    - All attachments are included and all information (i.e., references and submittal letters) cited in the document is available in the AR File.

- Any printed copy of an e-mail message to be added to an AR File includes the metadata (e.g., recipients, date sent, attachments) listed in LM Procedure 200-2, Electronic Records.
- (c) Contacts the source to request additional information, clarification, or replacement copies, as necessary, when documents are incomplete or lacking sufficient quality for treatment as a record.
  - (d) Reviews the document to ensure it does not contain UCI that would preclude it from being housed in the Public Portion of the AR File. [If the document or a portion of the document contains UCI, see Section 9.b., AR File – Confidential Portion.]
  - (e) Forwards the document to the AR Technician within 30 working days of receipt. The Technical Project Representative may include any special instructions for document handling.
- (2) The AR Technician:
- (a) Date stamps the document upon receipt.
  - (b) Enters appropriate metadata (e.g., document unique identifier, description, operable unit) into the CERCLA AR Database, generates a barcode from the database system, and affixes the barcode to the document. The barcode is a unique identifier that facilitates document tracking.
  - (c) Works with the Technical Project Representative to resolve any document quality issues such as page count discrepancies or reproducibility issues.
  - (d) Updates the AR File index to include the new document listing. The index includes both documents in the Public Portion of the AR File and the Confidential Portion discussed below in Section 9.b., AR File – Confidential Portion.
  - (e) Generates copies of the document for public repositories. [If only an electronic file is received, the AR Technician prints a paper copy of the file to be maintained as the official record.]
  - (f) Scans the original document to create an electronic version for inclusion in the web-based search application, as appropriate. [If an electronic version of the documents is received, the AR

Technician converts the file to a format compatible with the web-based search application.]

- (g) Distributes the document and updated AR File index to public repositories, including reading rooms, and makes them available in the web-based search application.
- (h) Files the original hardcopy document in the AR File.

b. AR File – Confidential Portion

This section provides instructions for adding information to the Confidential Portion of an AR File. Attachment D. illustrates the AR File Confidential Portion Inclusion Process.

(1) The Technical Project Representative:

- (a) Identifies or determines a document for inclusion in an AR File and applies the appropriate steps [in section 9.a.(1) above] to ensure the document is complete.
- (b) Identifies the UCI in the document and takes steps to protect the UCI while also making other releasable information available in the Public Portion of the AR File. Protection measures include:
  - Redacting the UCI in the document. Removed portions or blank pages in the redacted version should be marked: “This page (or portion) has been left blank due to UCI issues.” [The redacted version is placed in the Public Portion of the AR File while the unaltered original document is placed in the Confidential Portion of the AR File.]
  - Creating a summary of the document that describes its contents without disclosing the UCI. [The summary is placed in the Public Portion of the AR File while the original document is placed in the Confidential Portion of the AR File.]
  - Placing the document in the Confidential Portion of the AR File without creating a redacted version or summary for the Public Portion of the AR File. This may be necessary due to the nature or quantity of UCI contained in the document.
  - Making requests for UCNI documents in writing to assure UCNI is protected and to prevent unauthorized access or



disclosure. LM personnel requesting UCNI do not require a clearance. Prior to external release of UCNI documents, the RLO submits the documents to the Headquarters Security Officer, who shall have the originating program office review them to assure the release will not compromise the goals and objectives of the program office. In cases where the originating office cannot be identified, the Headquarters Security Officer shall send the documents to the appropriate DOE security office for review before release.

- (c) Forwards the original document and any redacted versions or summaries to the AR Technician within 30 working days of receipt. The Technical Project Representative includes instructions as to whether each document is to be placed into the Public or Confidential Portion of the AR File and includes any other special document handling instructions. Depending on the level of document sensitivity, the Technical Project Representative may seal the original document in an envelope or container labeled with the document title and the word “Confidential” or “Privileged.”

(2) The AR Technician:

- (a) Processes the redacted or summary document according to the steps in section 9.a.(2) above, taking into account any special instructions from the Technical Project Representative.
- (b) Segregates and stores any original documents identified as UCI in the Confidential Portion of the AR File. The Confidential Portion is housed in a locked file cabinet separate from the Public Portion. [If the document has been sealed, the AR Technician stores the document as received.]
- (c) Updates the Confidential Portion index to reflect new document entries.

c. AR File Maintenance

The AR Technician:

- (1) Retrieves AR File documents upon request.
- (2) Uses a request log to track public and stakeholder requests for AR File information.

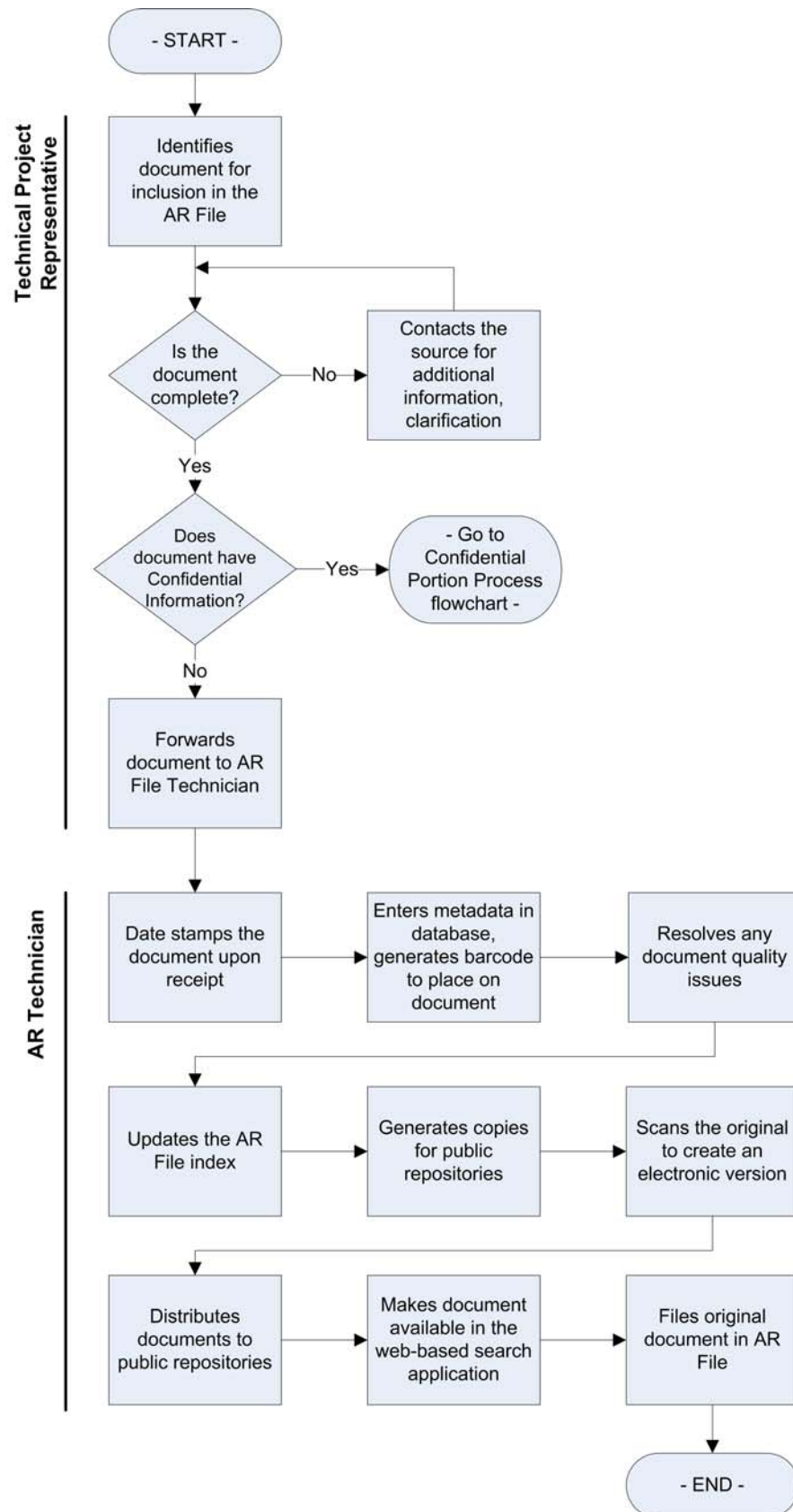
10. ATTACHMENTS.

- a. Attachment A. – AR File Document Inclusion Flowchart
- b. Attachment B. – DOE CERCLA Responsibilities
- c. Attachment C. – AR File Inclusion/Exclusion
- d. Attachment D. – AR File Confidential Portion Process Flowchart

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**Distribution:** As required

## Attachment A. – AR File Document Inclusion Flowchart



## **Attachment B. – DOE CERCLA Responsibilities**

### **a. CERCLA Background**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress in 1980 and amended in 1986. This law creates a tax on the chemical and petroleum industries and provided Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment.

CERCLA:

- Establishes prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- Provides for liability of persons responsible for releases of hazardous waste at these sites; and
- Establishes a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:

- Removals, where actions may be taken to address releases or threatened releases requiring response under section 104 of the CERCLA statute.
- Long-term remedial response actions, that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. These actions can be conducted only at sites listed on EPA's National Priorities List (NPL).

### **b. The Administrative Record (AR)**

The AR is the complete body of documents that form the basis for selecting a CERCLA response action (i.e., documents considered or relied upon in selecting a remedy).

The establishment of an AR serves two primary purposes:

1. It limits the judicial review of the adequacy of a response action.
2. It acts as a vehicle for public participation in selecting a response action because the AR must be available for public inspection and comment during the appropriate comment periods.

AR Files and accompanying indexes are compiled according to provisions of U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response (OSWER) Directive No. 9833.3A-1, Final Guidance on Administrative Records for Selecting CERCLA Response Actions.

Documents included in each site's AR File are a subset of information included in the project files for the site. Attachment D. – CERCLA AR Inclusion/Exclusion provides more detail on what files typically are included in and excluded from an AR File.

According to OSWER Directive No. 9833.3A-1, certain documents are not physically included in this AR File but are included for reference. Among these documents are chain-of-custody forms and sampling data, such as laboratory analytical results. The sampling data are summarized in the reports included in the AR File. Typically, the sampling data and related chain-of-custody forms are retained by the contractors that published the reports.

Documents contained in the AR File are identified with unique numbers to aid in tracking and retrieval of the documents. The index for each AR File should typically be updated about once each quarter. As the updates are issued, the AR File is inventoried against the new index to ensure its completeness.

c. Public Repositories

DOE must keep a copy of the AR File at or near the facility where the response is occurring. Additionally, the AR File must be maintained at a central location (e.g., the nearest area or field office for the site). To ensure the AR File is accessible by the public, the file must be located where security clearance is not required.

Specific public repositories are usually defined in each site's cleanup agreement and will vary from site to site. Public repositories can include:

- Public reading room locations
- Regional EPA offices
- Authorized state agency offices

d. AR File – Confidential Portion

An AR File may consist of a Public Portion, which includes documents available to the public and stakeholders, and a Confidential Portion, which includes documents that may be restricted from release due to the UCI they contain.

The Confidential Portion may include Privileged documents, such as documents subject to attorney-client, attorney work product, or deliberative process privileges; and Confidential documents, such as those containing confidential business information.

When a document is stored in the Confidential Portion of an AR File, an attempt is made to summarize the non-public information in a document available in the Public Portion. The document containing UCI is placed in the Confidential Portion of the AR File. All documents contained in the Confidential Portion must be listed in an index available to the public.

e. Information Repository

DOE is typically required to compile an Information Repository housing all information available to the public concerning response activities. Unlike an AR File, the Information Repository is not limited to just those documents that form the basis for selecting response actions.

The Information Repository typically contains many of the documents also contained in the facility's AR File. The Information Repository may contain additional information, such as press releases, of interest to the public.

The Information Repository includes a wide variety of information about the site, including fact sheets, reports on site activities, documentation of site sampling results, and general information about the CERCLA program. In many cases, sites have chosen to merge the AR and Information Repository into one public offering.

## **Attachment C. – AR File Inclusion/Exclusion**

The Administrative Record (AR) File typically, but not in all cases, includes relevant factual information, guidance documents, public notices, decision documents, enforcement orders, and an index of the documents in the AR File.

All documents in the AR File – in both the Public and Confidential Portion – are listed in the AR File index.

### **a. Inclusion Examples**

#### **Factual Information**

- Verified sampling data
- Quality control and quality assurance documentation
- Chain of custody forms
- Site inspection reports
- Preliminary assessment and site evaluation reports
- Agency for Toxic Substances and Disease Registry (ATSDR) health assessments
- Documents supporting the determination of imminent and substantial endangerment
- Public health evaluations
- Technical and engineering evaluations
- Approved workplans for remedial investigation/feasibility study
- State government documentation of applicable or relevant and appropriate requirements
- Remedial Investigation/Feasibility Study reports

#### **Guidance Documents**

- Guidance on conducting remedial investigations and feasibility studies,
- Guidance on determining applicable or relevant and appropriate requirements, guidance on risk/exposure assessments,
- Engineering handbooks

- Articles from technical journals
- Memoranda on the application of a specific regulation to a site
- Memoranda on off-site disposal capacity

#### Public Notices/Communications

- Notice of availability of the AR file
- Community relations plan
- Proposed plan for remedial action
- Notices of public comment periods
- Public comments and information received by the lead agency
- Responses to significant comments

#### Decision Documents

- Action memoranda
- Records of decision

#### Enforcement Orders

- Administrative orders
- Consent decrees

#### b. Exclusions

Documents are not included in the AR File if they do not form a basis for the selection of the response action. Exclusions may include draft documents, internal memoranda, and day-to-day staff notes. These documents, however, may be included in a facility's Information Repository.



## Attachment D. – AR File Confidential Portion Process Flowchart

